

Comment on the above plan, from a disinterested source, sent to the editor at the latter's request, is given below. The proper protection of milk and milk products is of great importance to the people of California. The legislature will convene on January 3. On that account the editor prints this information:

The plan originally conceived by Dr. J. J. King was essentially as follows:

The owners of cattle to pay into the state treasury a fee of \$1 per cow per annum. The accumulated sum of approximately \$800,000 to be used for tuberculosis control work throughout the state; part of the money to be used for compensation for the animals which were to be killed; the remainder to be used for promotion work which would increase the sale and consumption of milk and dairy products. Naturally, increased inspection through state officials, etc., was also contemplated. I heard the other day indirectly through the Dairy Council that this proposition is already killed. It was an idea conceived in the Department of Agriculture without consulting anybody. Personally, I feel that the letter by Doctor \_\_\_\_\_ and the resolution should be published in the Journal. I enclose a copy of Doctor King's plan.

Sincerely yours,

## MEDICO-LEGAL \*

### Osteomyelitis Attributed to Extraction of Tooth

Roberts, the plaintiff, had been suffering from toothache for a day or two. The gum surrounding the tooth was swollen, much inflamed, and extremely sore. He sought relief at the office of one E. R. Parker, otherwise known as Painless Parker. There a Doctor Baer examined the tooth and, without taking a roentgenogram to determine the cause of the inflammation and swelling, injected procain with a hypodermic needle into the inflamed and swollen gum, in two places on each side of the jawbone, and extracted the tooth. The patient grew rapidly worse notwithstanding his visits from day to day to Parker's office. On the sixth day after the extraction he consulted other dentists and oral surgeons. They sent him to a hospital, where a diagnosis of osteomyelitis of the jawbone was made and he was operated on. At the expiration of a week, he was transferred to another hospital, where he remained for thirty-six days and was subjected to two more operations. In the end he recovered, but he had lost all sense of feeling in the region of the right lower jaw, and such teeth as remained on that side were loosened. He thereupon brought suit against Parker and another, and from a judgment in his favor, the defendants appealed to the District Court of Appeal, first district, division one, California.

There was ample expert testimony, said the district court, to prove that inflammation, swelling and pain in the gums are definite symptoms of infection, and that where such conditions exist the dental profession considers it dangerous to inject an anesthetic into the gum with a needle and to extract a tooth, without first making a roentgenogram to determine the cause and extent of the infection and without first taking steps to reduce such infection as is present. The injection of a local anesthetic blindly at the base of an infected tooth is likely to scatter the infection, which, if carried into the blood stream, will produce osteomyelitis of the jaw bone. In view of the swollen, highly inflamed and extremely sore condition of the patient's gum in the vicinity of the aching tooth when he first visited the office of the dentist defendants, and of the serious effects that followed the removal of the tooth, the jury was justified in concluding as it did that the attending dentist did not exercise reasonable skill and diligence and that his failure so to do was the direct cause of the acute condition that followed the extraction. The dentist defendants contended, however, that regardless of their alleged failure to exercise reasonable skill and care, the injection of the anesthetic and the extraction of the tooth had nothing to do with the causation of the osteomyelitis. . . .

Commenting on the contention that there was a possibility that the osteomyelitis of the jawbone had

developed from some cause other than the dentist defendants' failure to use reasonable precautions and ordinary care, the court pointed out that because of the subtleness of the origin and development of osteomyelitis it was not necessary that the evidence should demonstrate conclusively and beyond the possibility of a doubt that the injury of which the plaintiff complained was the result of negligence. If that were the rule, said the court, it would never be possible to recover in a case of negligence in the practice of a profession which is not an exact science. If in spite of testimony tending to show a different origin of a disease there is testimony to sustain an opposite conclusion which has been reached by the jury, the verdict of the jury must be sustained.

The judgment of the trial court in favor of the plaintiff was affirmed.—*Roberts v. Parker (Calif.)*, 8 P. (2d) 908.

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### Dental Practice Acts—Aiding and Abetting an Unlicensed Practitioner

The Dental Practice Act of California authorizes the revocation of a dentist's license if he aids or abets an unlicensed person to practice dentistry unlawfully. A complaint was duly filed before the Board of Dental Examiners of California, charging that a licensed dentist, Bley, "permitted one R. F. Morrison to have the use of a certain dental office . . . and to have the use of certain dental instruments and paraphernalia therein contained, for the purpose of practicing dentistry," and that by said acts Bley "aided and abetted the said R. F. Morrison, an unlicensed person, to practice dentistry unlawfully." Bley obtained from the Superior Court of San Joaquin County a writ of prohibition that prevented the board from proceeding under the complaint. The board thereupon appealed to the District Court of Appeal, third district, California. We think, said the Appellate Court, that the accusation is fatally defective in the following particulars: First, there is no allegation that Bley owned or had any control of the dental office or equipment referred to. Second, there is no allegation that Bley owned or had leased the building or premises wherein the dental offices and equipment were located. Third, there is no allegation that Bley knew or had any information that Morrison was an unlicensed dentist. The Board of Dental Examiners contended that a complaint of unprofessional conduct is sufficient if it is in the language of the Dental Practice Act, but nowhere in the statute, said the court, is to be found the word "permitted." If the word "permitted" had been left out and the accusation had charged that Bley had aided and abetted Morrison to practice dentistry unlawfully, then a violation of the Dental Practice Act might have been stated. The Board of Dental Examiners laid great stress on the fact that Bley did not object to the sufficiency of the complaint before the board. This contention was held to be without merit, however, since a complaint, in its statements of facts, must be sufficient to show unprofessional conduct or it will not give the board power or jurisdiction. The judgment of the Superior Court prohibiting the board from proceeding under the complaint was affirmed.—*Bley v. Board of Dental Examiners of State of California (Calif.)*, 7 P. (2d) 1053.

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### Malpractice—Infection Following Childbirth

There can be no doubt, said the District Court of Appeal, first district, division one, California, that it requires no expert testimony to prove actionable negligence on the part of a physician who performs a rectal and vaginal examination with unsterilized hands, if it is shown that an infection proximately results therefrom. But where the only evidence of infection is that an examination made two months after the delivery disclosed a tear in the uterus, which was infected, and the examining physician fails to testify as to the probable or possible source of the infection, or as to the length of time it may have existed, a finding that the infection resulted from the plaintiff being examined, prior to delivery, by a physician who neg-

\* These abstracts of three California cases are reprinted from the Journal of the American Medical Association, Vol. 99, No. 18.

lected to sterilize his hands, does not find substantial support in the evidence. It amounts to no more than the barest surmise or conjecture. In the absence of expert testimony, the jury could not properly find that the defendant was guilty of malpractice because the fetus was twisted violently, causing the plaintiff great pain, when the only expert witness to testify stated that in certain cases it is proper practice to turn the baby to facilitate delivery. Neither would the fact that all or part of the placenta was not removed furnish evidence of negligence, in the absence of expert testimony, especially where there is a total lack of evidence that any injury was proximately caused thereby. To establish malpractice, it was alleged that repeated examinations of the plaintiff were made by those whom she described as medical students, accompanied by levity and discourtesy. The plaintiff relied on the case of *De May v. Roberts*, 46 Mich. 160, 9 N. W. 146, 41 Am. Rep. 154, in which a doctor took an unmarried, nonprofessional man with him into the delivery room. In that case the court held that the mother was entitled to recover for the "shame and mortification" which she thereby suffered. In the present case, however, shame and mortification were not alleged as an element of damage, the recovery being sought solely for alleged physical injuries. Conceding that the treatment accorded the plaintiff amounted to battery or trespass to the person, the court said, there was no showing that any substantial injury was proximately caused thereby. In the absence of any expert testimony that the defendant was guilty of malpractice, the Appellate Court sustained the action of the trial court in granting the defendant's motion for a nonsuit.—*Inderbitzen v. Lane Hospital (Calif.)*, 7 P. (2d) 1049. (J. A. M. A., Vol. 99, No. 17.)

## FUTURE TAXES \*

### National Economy League—California Division

California Headquarters—Dr. Alanson Weeks, temporary chairman; Samuel P. Johnston, organizing secretary. 625 Market Street, San Francisco. Room 217. Douglas 8288. California branch now being organized.

National Advisory Council—Calvin Coolidge, Alfred E. Smith, Elihu Root, Newton D. Baker, General John J. Pershing, and Admiral William S. Sims.

National Officers—Rear Admiral Richard E. Byrd, chairman; Archibald B. Roosevelt, secretary; Graham B. Blaine, treasurer.

California Advisory Council—Now being formed. These have accepted: Dr. David P. Barrows, formerly president of the University of California; Lieutenant-General Hunter Liggett, United States Army, Retired; Dr. Robert A. Millikan, president California Institute of Technology, Pasadena.

### Where We Should Cut the Costs

The Federal Budget has five main divisions. Public Debt, Veterans, Army and Navy, and Public Works cover 83 per cent of the total. The fifth division or 17 per cent represents all other activities of the government. Although great attention is being given by the government itself to possible savings in these administrative costs, any further reduction that can be made at this time would be relatively small in contrast to the total sum involved. Let us examine the four other items:

Public Debt—\$1,136,700,000. About \$640,000,000 is for interest and \$496,700,000 is for sinking fund operations under statutory provisions.

Veterans' Administration—\$928,000,000. This represents almost a quarter of the total. In the last five years World War costs have greatly increased until they threaten by 1945 to equal the cost of the war itself.

Army and Navy—\$648,300,000. This will be spent for the country's defense, admittedly reduced to the

lowest possible point consistent with national safety unless disarmament is accomplished by international agreement.

Public Works—\$538,100,000. Expenditures under this head may well be subject to a reduction, but they are at this time an important contribution of the government to relief of unemployment.

Obviously, therefore, any serious consideration of important federal economy invites analysis of expenditures by the Veterans' Administration.

### A Challenge to the American People

Representative Government is at the cross-roads. This nation is now engaged in an unprecedented struggle against the combined forces of economic, political and social disorganization. The people must face squarely the question as to whether they will longer permit their government to be a thing apart, influenced chiefly by sectional or class groups, or whether they will band together to exercise through it the principles upon which the nation is founded.

It is useless to find fault with others for the present situation. The responsibility for the action of our political bodies lies with the people themselves. The average public servant will do what he believes the majority of his constituents wish him to do. It only remains for the great mass of citizens of this nation to inquire, to think, and to act.

### Purposes of the League

The National Economy League is a strictly non-partisan citizens' organization formed to direct public opinion toward government economy. It believes that the foundation stone of recovery and of national stability is the restoration of government administered economically for the benefit of all the people. It proposes to present to the voters of the country a definite program for the elimination of wasteful expenditures which have crept into the government through the pressure of special interests. Its success depends upon the active support of those thoughtful citizens who, without regard to class section or party sympathy, put the interests of the nation above all else.

The following is taken from its "Declaration of Purposes":

1. "To revive and restore the American principle that our Government shall be a Government truly for the benefit of the whole people. . . .

2. "As a general objective to secure the reduction of all wasteful and unnecessary governmental expenditures, federal, state and local, which have risen to a point where they threaten the public credit and sap the resources of the people—and thus to compel the reduction of the taxes which these rising expenditures ultimately exact from all the people. To this end to cooperate with other nonpartisan citizens' organizations concerned with the reduction of governmental expense and taxes.

3. "To provide a national organization through which the unorganized majority—all the men and women entitled to vote—may unite for effective action to achieve these objects."

### Immediate Objective

The National Economy League takes as its first specific objective the elimination of the legalized abuse whereby at least \$450,000,000 per annum is now being expended by the national government for benefits to veterans *who suffered no disability in or through war service*. This expenditure is entirely distinct from the payments under the so-called "Adjusted Compensation Act" (popularly known as the Bonus).

The elimination of this expenditure will in no way interfere with a national policy of just and liberal treatment of the dependents of those who lost their lives in the service of their country, and of living veterans who were in fact incapacitated as a result of war service. Such a policy the League supports and advocates.

The League vigorously opposes, however, the legalized abuse of payments and benefits for nonservice-connected disabilities:

\* See also editorial comment, page 401.